itself from competition. Given the unique capabilities of LMDS technology and its relative advantages over wired services, it is imperative that the Commission ensure intraservice competition by licensing two commercial applicants in each market.

Video/Phone agrees that LMDS has the capability of supporting many important public interest services, including distance learning. Rather than setting aside one of the licenses for these purposes, however, Video/Phone believes the public interest would be better served if licensees were required to make access available for such educational activities on a small portion of their network at preferential rates.[27] The educational and other non-commercial users would then have the benefit of two-way, broadband wireless services without needing to expend precious capital resources in constructing the

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[26] (...continued)
Preference rulemaking that a pioneer was entitled to only a single area, since it viewed such a reward as an adequate incentive, Pioneer's Preference, FCC 91-112, released May 13, 1991 at paras. 53-54, and Suite 12 had notice of this limitation before it filed its pioneer's preference request. Moreover, to the extent that Suite 12 has patented technology that will be used for the provision of this service, it can obtain reasonable royalties for the use of that technology, which should adequately reward it for its efforts in developing the technology. But cf., Wireless Cable Association Comments at pp. 24-26 (the Commission should ensure that Suite 12 does not use its control over technology to supplant the FCC's licensing function). Thus, the Commission's decision to award Suite 12 with only a single market will not in any manner discourage future innovative activities by telecommunications entrepreneurs, and so should be upheld.

[27] Cf., 47 U.S.C. Sec. 335(b), requiring DBS operators to reserve 4-7% of their capacity for noncommercial programming, at preferential rates to be determined by the Commission; America's Public Television Stations et al. at p. 17, suggesting first priority access at free or preferential rates as an alternative to a set aside; Educational Parties at p. 14, proposing an alternative of free or reduced rate access for educators.

networks. At the same time, this approach would preserve competition between two commercial system operators, thereby assuring the public of the benefits of competition, including innovations and the highest quality service at the lowest cost.

Finally, the Commission should dismiss the request of NAACP to set aside one of the blocks of spectrum for minority applicants. The proposal for a minority set aside is premised on the incorrect assumption that LMDS is a media of mass communications. While LMDS may provide the capability to offer, inter alia, wireless cable type services, LMDS should not be viewed as such a limited service. Video/Phone anticipates that the majority of services offered over LMDS will be broadband, two-way services, and not merely wireless cable.[28/] Moreover, it is not at all clear that even for video programming delivery services would the goal of "diversity" in broadcast voices be achieved, because the LMDS operator may not have any control over the content, particularly if operating as a common carrier. Finally, in light of the anticipated explosion in video programming distribution outlets (including DBS, MMDS, video dial tone, and 500 channel cable systems), it is doubtful that there will be any problems in minority programmers or anyone else bringing their product to the marketplace. Thus, there is no valid justification for setting aside one-half of the spectrum for minority applicants.

[28/] Suite 12 apparently shares this view (e.g., Suite 12 Comments at pp. 6-7), although its comments also rely on cable service capabilities in urging a cross-ownership ban on cable companies (Suite 12 Comments at p. 38).

IV. The Commission Should Adopt Licensing and Service Rules that Will Deter Speculative Applicants

The Notice incorporates numerous provisions intended to discourage filings by insincere applicants merely seeking to "win" a valuable government resource, rather than seeking a license in order to provide service to the public. Video/Phone in its comments supports the Commission's proposal to utilize a "letter perfect" standard, to prohibit interests in multiple applications in a territory, to require a firm financial commitment for funding the construction and operation of the system, to use a one-day filing window, and to prohibit transfers prior to completion of construction. Several commenters propose to weaken or eliminate these requirements, but Video/Phone urges the Commission to reject their requests.

the level of investment needed to meet that goal. Video/Phone believes, however, that the FCC should not further relax the financial requirement. Lowering the threshold as suggested would create a very real risk that licenses would be awarded to companies without the resources to fully construct the system, leading to unused spectrum and no or inadequate service to the public.[29]

Several commenters also supported a "post card" lottery entry instead of a letter perfect application.[30] Video/Phone continues to believe that a letter perfect application requirement will serve to screen out speculative applicants much more effectively than a post card.[31] Video/Phone shares the Commission's goal of eliminating the abuse of its processes by insincere applicants, having observed first hand the problems and delays wrought by the "application mills" with respect to other

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[29] In the context of satellite services, the FCC relaxed its financial requirements in order to allow "entrepreneurial" companies to obtain licenses, only to find that the systems were not constructed, and the licenses eventually had to be revoked. E.g., National Exchange Satellite, Inc., 8 FCC Rcd 636 (1993); Geostar Positioning Corporation, 6 FCC Rcd 2276 (1991). Cf., Columbia Communications Corporation, 103 FCC 2d 618 (1985), affirmed Columbia Communications Corporation v. FCC, 832 F.2d 189 (D.C. Cir. 1987).

[30] E.g., Comments of Suite 12 at p. 46. If, as Suite 12 asserts, the concern is with the paperwork and storage burdens on the FCC, then the Commission could utilize the filing procedures adopted for cellular, where applications are submitted on microfiche, and only the winning applicant need submit a paper copy.

[31] See also Comments of US WEST at pp. 13-14, indicating that a short form or post card application would not be acceptable as a method of screening an applicant threshold qualifications.

services. Thus, Video/Phone urges the Commission not to further relax the application requirements.

Suite 12 also requested clarification that the rules permit an entity to receive a technology license fee without such an arrangement constituting an "interest in an application or a license."[32] Video/Phone submits that the Commission cannot issue a blanket approval without knowing the details of the arrangements. Such a licensing agreement could be a legitimate, arm's length transaction that fairly provides compensation to the developer of technology, or it could be used as a subterfuge for obtaining an interest in multiple applications in a single market or for disguising an ownership interest.[33] Video/Phone believes the Commission should not attempt to address this issue in a vacuum, but instead should require that such arrangements be fully disclosed so that they can be evaluated at the appropriate time, based on an adequate record detailing the specific agreement.

In conclusion, Video/Phone urges the Commission to move ahead rapidly with the allocation of spectrum and adoption of licensing and service rules in a manner that is consistent with

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32/ Suite 12 Comments at pp. 39-40.

33/ For example, a manufacturer could attempt to include an option to acquire a specified percentage of the licensee as a condition to granting access to technology as part of the "royalty" arrangement. Such an arrangement should concern the FCC, since an ownership or other similar interest in both licensees in the same market would likely hinder intraservice competition.

the Notice and Video/Phone's initial comments. Such a course will best serve the public interest.

Respectfully submitted,

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